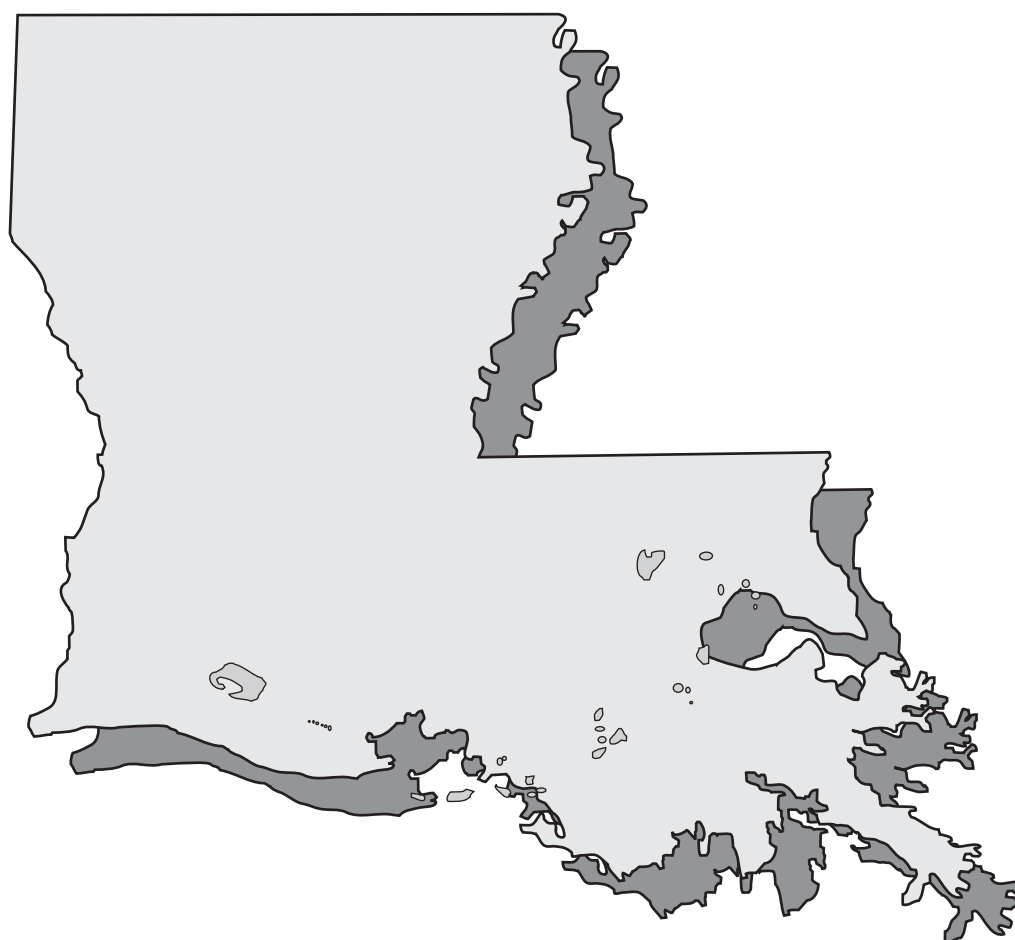


Planning for Incapacity

A Self-Help Guide



Advance Directive Forms for Louisiana

Legal Counsel for the Elderly, Inc.

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**Sponsored by AARP Foundation
601 E Street, N.W.
Washington, DC 20049**

This guide was primarily developed by Legal Counsel for the Elderly (LCE), sponsored by AARP Foundation, and reviewed by: American Hospital Association (AHA), American Bar Association (ABA), American Medical Association (AMA), Catholic Health Association (CHA), and Voluntary Hospitals of America, and the Louisiana Elder Law Task Force.

The opinions expressed herein are those of the primary author and should not be construed as necessarily representing the policy or position of LCE, AARP, AHA, ABA, AMA, CHA, or VHA. No official endorsement of these materials should be inferred.

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Table of Contents

When Are Advance Directives Needed? 1

Which Advance Directive Should I Choose? 3

Section I

Health-Care Power of Attorney 7

Section II

Living Will 17

Section III

Practical Tips 23

Section IV

Talking to Your Doctor 25

Glossary 31

Resources. 33

When are Advance Directives Needed?



You are in a nursing home with Alzheimer's disease which causes you to be confused and disoriented. You fall, fracture your hip, and now you require a hip replacement. Since you are unable to make the decision, who will consent to the treatment?

You are struck by a speeding motorcycle while crossing the street. While you are unconscious at the hospital, your doctor determines that you require a blood transfusion. For religious reasons, you have objected to blood transfusions in the past. Now that you cannot voice your objection, how can you be sure that your wishes will be protected?

After being treated for a heart condition, you suffer a stroke. As a result, you have severe brain damage and are now in a permanent coma, and not expected to live more than a few months. You are fed through a tube. Should the feeding tube be removed? Who will make the decision? How should the decision be made?

In most health-care situations, you have the right to make decisions about your medical treatment. Based on the information you receive, as well as your values and beliefs, you must weigh the risks and benefits of the proposed treatment, the likelihood of success, and any alternative course of treatment. Ultimately, you decide which treatments you want and which ones to refuse. However, there may be a time when your illness, injury, or disability prevents you from being able to make your own decisions. Even if *you* are unable to make the decision, a decision will still be made. The issue becomes how much control you wish to exert over those decisions.

Recent advances in technology have increased the ability of the medical profession to extend life where formerly an individual might have died. Many people are increasingly concerned about the *quality* of the life that they will experience as the result of these advances in medical technology. This is particularly the case where an individual is mentally or physically incapacitated and unable to make decisions about medical care.

Courts have almost always followed the expressed wishes of competent adults. A competent adult can communicate preferences about future medical treatment through legal documents called **advance directives**. By using advance directives, you can control your health-care decisions, even if you become incapacitated in the future. You prepare the advance directives while you are capable of making your own decisions. Generally, they take the form of instructions to your doctor, or appointment of someone to make decisions for you. They can cover specific treatments such as life-sustaining procedures, or be very general and cover all medical decisions.

An advance directive can allow you to participate in decisions such as:

- ▶ choosing health-care providers (doctors, nurses, home health aides);
- ▶ deciding who can have access to your medical records;
- ▶ choosing the type of medical treatment you will receive;
- ▶ refusing certain types of medical treatment; and
- ▶ choosing the person who will make decisions for you when you are unable to do so.

The following pages cover the most common types of advance directives – health-care powers of attorney and living wills. The questions and answers are specific to Louisiana State law. The forms included in this guide are the forms in your state statutes or, when there is no form in the statute, a generic form that complies with state law. Before completing the forms, please read this guide carefully, as well as the instructions with the forms.

— NOTICE —

The information and forms contained
in Sections I and II and in the appendices
of this guide are based upon Louisiana law and
practice as of March 30, 2001. Laws do change
so you should check to see if Louisiana's law
has changed since the date of this publication.

Which Advance Directive Should I Choose?

Should I have an advance directive?

Yes. Advances in medical technology in the last decade have changed the general view about health care. We now have cures for diseases which led to death a decade ago. Medicine also has seen the development of procedures and treatments that are solely for the purpose of prolonging one's life. For many people, the thought of their life being prolonged when no cure is possible is unacceptable. Others feel that these procedures provide additional possibilities for survival. In either case, difficult choices must be made.

Clearly, if you have the capacity to decide, you have the right to make choices. However, if you are unable to make your own medical treatment decisions, someone else will decide for you. Advance directives allow you to control your health-care decisions even when you become incapacitated. To limit certain types of treatment, you need an advance directive. If you want to choose who will decide for you when you are unable to decide for yourself, you need an advance directive.

The type of advance directive you choose depends on what you want to accomplish. The two most common advance directives are the **health-care power of attorney** and the **living will**. Although you can make an oral health-care power of attorney, and an oral living will declaration after you have been diagnosed as having a terminal and irreversible condition, the information that follows applies to written health care powers of attorneys and living wills.

What is a health-care power of attorney?

A health-care power of attorney (HCPOA) is a legally enforceable document in which you (the principal) authorize another person (the agent) to make health-care decisions for you. The document must be prepared and signed while you are competent, and it is not affected by your later disability or incapacity. You may state in the document both the types of treatment that you do not want, as well as, any treatment that you want to be sure that you receive. The document can give your agent authority to make specific health-care decisions, or the authority to make any and all health-care decisions you could make if you were able, including life-sustaining procedures. However, as long as you can make your own decisions, you, and not your agent, have the authority to make your own treatment decisions.

What is a living will?

A living will is a written declaration directing your doctor to withhold or withdraw life-sustaining procedures in the event you are diagnosed as having a terminal and irreversible condition. It does not apply to any other health-care decisions. A terminal and irreversible condition may occur in two situations. It may occur when a patient has an incurable condition caused by an injury, disease or illness, which within reasonable medical judgment would produce death, or is in a continual profound comatose state, and has no reasonable chance of recovery and for which the application of life-sustaining procedures would serve only to postpone the moment of death. Two physicians who personally examined you, one being your attending physician, must certify in writing that your condition is terminal and irreversible.

Because there are various types of life-sustaining procedures, you must consider whether you wish to have all types withheld or withdrawn, or only some. If you wish to have only some types withheld or withdrawn you must specify which types of treatment you do not wish to receive. You should always indicate your preference about the use of artificial nutrition and hydration, even though it is included in the definition of life-sustaining procedures. You may choose to designate someone in your living will to make decisions for you should you become comatose, incompetent or otherwise mentally or physically incapable of communicating a decision.

What is the difference between a health-care power of attorney and a living will?

The major difference is that the HCPOA is more flexible. A living will comes into effect only if your condition is terminal and irreversible. In addition, a living will only allows you to direct that life-sustaining procedures be withheld or withdrawn. A living will requires you to consider circumstances that may arise in the future and indicate your preferences long before you know what medical problems you may develop.

A HCPOA may address *all* types of health-care decisions, including life-sustaining procedures if expressly stated and properly addressed. In addition, the HCPOA lets you select the person who will make decisions about your health care when you are unable to do so. The ability to select an agent to act on your behalf allows you to exert some control over unexpected circumstances that are not specifically described in your HCPOA.

Should I have both documents?

Yes. An agent appointed in a HCPOA can make any decision except those directed in a living will, unless the HCPOA expressly gives the agent authority to make life-sustaining decisions.

If I move to another state, will my advance directive be valid?

Probably. It is evidence of your wishes no matter where you are. However, the legal requirements for health care directives vary from state to state. A few states specifically recognize health care directives that were validly executed in another state. In most states the law about recognizing directives signed in other states is unclear. If you want to be absolutely safe when you move to another state, it is a good idea to complete a new document that meets the requirements of the law in that state. In case you are involved in a car accident in another state, you should carry a wallet card indicating that you have signed a health care directive and how to get in touch with your agent, if you have one. Although this precaution may not guarantee that your wishes will be carried out, having a health care directive and a wallet card will go far in letting others know of your wishes. There is a wallet card on the back cover of this guide for you to cut out and use.

Can I be required to sign one or both of these documents as a condition for admission to a health-care facility?

No. A hospital or nursing home cannot refuse to admit you because you have not signed a living will or HCPOA. If any health care facility tries to force you to sign an advance directive, you should contact the Medicare or Medicaid licensing agency in your state. On the other hand, if you have signed a living will or HCPOA, the hospital or nursing home must advise you, at the time of admission, about any policies it has that would prevent it from carrying out your expressed wishes.

Who should I talk to about an advance directive?

In addition to putting your wishes in writing, it is as important to discuss these issues with your family, doctor, spiritual advisor, and attorney. Although most health-care decisions are fairly routine, decisions about life-sustaining treatment, experimental medical treatment, and organ donation are all issues that need to be discussed with others. These are decisions for which your wishes may not be known. Talking about the possibility of becoming incapacitated is not easy. Often people discuss it only in the most general terms – “I don’t want to be a vegetable.” General statements are unlikely to provide enough information about your specific wishes to allow someone else to act on your behalf. In addition, you may find that your values and beliefs differ from those of your family, friends, spiritual advisor or doctor. By discussing these matters in advance you may eliminate any uncertainty about what decisions you would make.

The first step – Ask yourself the following questions:

- Who do you want to make decisions on your behalf?
- Are there certain types of life-sustaining procedures you would want if you had a terminal condition?
- Are there life-sustaining treatments you would not want?
- Under what circumstances would you not want these treatments?
- If you had a choice, where would you want to die?

Talking to family and friends – You may not be able to offer exact answers about treatment decisions. However, it is important to share your general values and beliefs. Is it important to you to be independent? Free of pain? Live as long as possible?

Talking to a doctor – A doctor can explain the benefits and burdens of various types of life-sustaining treatments. You can discuss your medical treatment wishes and your beliefs about the quality of life you would wish to have under various situations.

Talking to a spiritual advisor – Your spiritual advisor can provide guidance on the difficult ethical and moral questions that are part of making your decision.

Talking to a lawyer – A lawyer can make sure that your advance directive is legally valid and reflects your desires and wishes as clearly as possible.

SECTION I

Health-Care Power of Attorney

Who can be my agent?

Your agent can be anyone who knows you well and whom you trust, such as your spouse, relative, friend or spiritual advisor. It does not have to be a lawyer. Your agent must be an adult (18 years of age or older) who is competent to make decisions. You should consider nominating an alternate agent in case your first choice is unable or unwilling to make a health-care decision.

What should I consider when choosing my agent?

The person you choose should be someone who knows your values, religious beliefs and preferences about medical treatment. It is helpful if the person is in frequent contact with you, is geographically close to you and easy to reach in an emergency. It is critical to discuss your medical treatment preferences and your wishes about life sustaining treatments, even if the agent you choose is someone who knows you well. There are often significant differences in values, life experience and knowledge between people. It is essential that your agent understand your values and wishes and is willing to act upon them rather than his or her own preferences.

What kinds of decisions can my agent make?

The agent can be granted general authority to make any health-care decisions you could make unless you limit the agent's authority in the HCPOA. For example, an agent can be authorized:

“to make any and all health-care decisions on the principal's behalf, including, but not limited to, decisions related to surgery, medical expenses, hospitalization, nursing home residency or medication.”

You can also list the specific powers which you desire to be included. For example, an agent can be given the authority to:

- ▶ grant, refuse, or withdraw consent on the principal's behalf for any health-care service, treatment or procedure, including medication decisions.
- ▶ talk to health-care personnel, get information, have/give access to medical records, and sign forms necessary to carry out health-care decisions.
- ▶ authorize admission to or discharge from any hospital, nursing home, residential care, assisted living or similar facility or services, and to contract for any health-care related service or facility.
- ▶ authorize payment for any expenses resulting from health-care services, treatment, placement or procedures provided.

The general authority to make health-care decisions does not include decisions about life sustaining procedures. The agent can however, be given specific authority to make decisions about life sustaining procedures. If such a grant is provided, the document must include the additional requirements necessary for a valid living will. Your wishes must be clear to your agent, as well as to your doctor and other health-care professionals. In Louisiana, a mental health advance directive should be used to make decisions concerning the treatment and placement of an individual for mental health reasons. There are distinct laws that apply in those situations.

How do I create a health-care power of attorney?

You must be mentally competent and an adult to execute a HCPOA. Louisiana law does not include a sample health-care power of attorney form. However a few examples are provided in this guide. Whatever form is used there are a few rules that must be followed in order for the document to be valid.

- ▶ The principal or the document must clearly state that the agent can make health-care decisions;
- ▶ It must be in writing;
- ▶ You must sign and date the HCPOA;
- ▶ The law on informed consent requires that the HCPOA be witnessed by one competent witness. It is a good idea to always use two witnesses and a notary when possible. **Important Note:** If your HCPOA includes a provision as to your desires concerning life sustaining procedures, the form must follow the requirements of a living will, which are that it be signed, dated, and witnessed by two individuals (not related by blood or marriage or entitled to any portion of your estate under any will or by operation of law).
- ▶ The person appointed as your agent or mandatary must accept the responsibility; therefore, the agent should be informed of the appointment and a copy of the document provided to the agent.

Can I cancel my health-care power of attorney?

Yes. As long as you have the capacity to make an HCPOA, you can also cancel one. If you want to cancel or revoke the agent's authority to make decisions, you should notify your doctor and agent, orally or in writing. In either case, you can also change or revoke an HCPOA by writing a new one.

In addition, your health-care power of attorney will automatically terminate in the following circumstances.

- ▶ When a court appoints a curator for you in an interdiction;
- ▶ When the agent or mandatary is found to be incompetent;
- ▶ When either the principal or the agent or mandatary dies;

Am I required to update my health-care power of attorney?

No. The law does not require you to update your HCPOA. However, it may be good practice to review your HCPOA every few years to make sure it continues to reflect your current wishes. If your wishes about certain medical treatments change, you should revise your HCPOA or write a new HCPOA.

and include the changes. If the treatment is not mentioned, at the very least you should tell your agent about your wishes. If it is a major issue it may be a good idea to add it to your HCPOA.

You should also periodically review your choice for agent. For example, if you get a divorce or your spouse has died and you have named your spouse as your agent, you need to consider whether you want to name someone else.

When does a health-care power of attorney become effective?

Unless otherwise stated in the document itself, the power of attorney becomes effective upon execution of the document and remains in effect should you no longer be able to make your own decisions. During the period of time when both the principal and agent enjoy capacity, both have the power to act. Should you become incapacitated, only the agent has the power to act.

If your HCPOA includes a provision regarding your wishes concerning life sustaining procedures, the authority granted does not become effective immediately. Your wishes regarding life-sustaining procedures can be followed only after two physicians have actually examined you and certified that you have a terminal and irreversible condition.

A document can specify that the HCPOA only becomes effective once you, the principal, are no longer able to make your own decisions. For more information on a springing power of attorney, also called a conditional procuration, please talk to a lawyer.

Instructions

Louisiana Health-Care Power of Attorney

How to Use This Form

- ▶ Read this guide carefully.
- ▶ Read the instructions on these pages.
- ▶ Neatly print or type all information except where a signature is required.

Paragraph 1

Neatly print or type your name and the name, address and telephone number of your agent.

Paragraph 2

Neatly print or type the names(s) of your alternate agent who will act only if your original agent is unable to act on your behalf.

Paragraph 4

This section is where you must indicate what specific instructions you have, if any, about future health care. If you fill in “none” or “no limitations,” remember that your agent will have authority to make *all* lawful health-care decisions except those regarding life-sustaining procedures. You may state any type of treatment that you do not desire and/or any that you want to make sure you receive.

You can make your preferences known about treatment decisions, such as:

- ▶ amputations
- ▶ blood transfusions
- ▶ chemotherapy
- ▶ transplants
- ▶ organ donation
- ▶ exploratory procedures and surgeries

Before signing this document, make sure of the following:

- ▶ review all of the information carefully
- ▶ make sure that you have clearly expressed your wishes
- ▶ if you make any errors in filling out the form, correct them in ink and put your initials and date next to the correction
- ▶ make sure you have had detailed discussions with your agent and your doctor

**IF YOU DO NOT UNDERSTAND OR HAVE QUESTIONS
ABOUT THE USE OF THIS FORM, CONTACT
AN ATTORNEY, HEALTH-CARE PROVIDER,
OR SOCIAL WORKER.**

Louisiana Health-Care Power of Attorney

1. I, _____, hereby appoint:

name

home address

(_____)_____
home telephone number

(_____)_____
work telephone number

as my agent to make health-care decisions for me if I become unable to make my own health-care decisions such as the following powers that I have initiated:

_____ A. Grant, refuse, or withdraw consent on my behalf for any health-care service, treatment or procedure, even though my death may ensue.

_____ B. Talk to health-care personnel, get information, have access to medical records and sign forms necessary to carry out these decisions.

_____ C. Authorize my admission to or discharge from any hospital, nursing home, residential care, assisted living or similar facility or service.

_____ D. Contract on my behalf for any health-care related service or facility (without my agent incurring personal financial liability for such contracts) such as surgery, medical expenses and prescriptions.

_____ E. To make decisions regarding surgery, medical expenses and prescriptions.

2. If the person named as my agent is not available or is unable to act as my agent, I appoint the following person(s) to serve in the order listed below:

A. _____

name

home address

(_____)_____
home telephone number

(_____)_____
work telephone number



B. _____
name
home address
(_____) _____
home telephone number
(_____) _____
work telephone number

3. With this document, I intend to create a durable power of attorney for health-care, which shall take effect upon and only during any period in which, in the opinion of my attending physician, I am unable to make or communicate a choice regarding a particular health-care decision. My agent shall make health-care decisions as I direct below or as I make known to him or her in some other way. If my agent is unable to determine the choice I would want to make, then my agent shall make a choice for me based upon what my agent believes to be in my best interest.

4. **SPECIAL PROVISIONS AND LIMITATIONS.** I do not want the following treatments:

5. To the extent that I am permitted by law to do so, I herewith nominate my agent to serve as the curator of my person, and/or in any similar representative capacity. If I am not permitted by law to make a nomination, then I request in the strongest possible terms that any court consider this nomination.

6. No person who relies in good faith upon representations by my agent or alternate agent shall be liable to me, my estate, my heirs or assigns for recognizing the agent's authority.

7. The powers delegated under this power of attorney are separable, so that the invalidity of one or more powers shall not affect any others.

BY MY SIGNATURE I INDICATE THAT I UNDERSTAND THE PURPOSE AND EFFECT OF THIS DOCUMENT.

I sign my name to this form on _____
(date)

at: _____
(city, state)

(Signature)

WITNESSES

The person who signed or acknowledged this document is personally known to me and I believe him/her to be of sound mind.

First Witness:

Signature: _____

Home Address: _____

Print Name: _____ Date: _____

Second Witness:

Signature: _____

Home Address: _____

Print Name: _____ Date: _____

NOTARIZATION

STATE OF _____

PARISH OF _____) ss:

I, _____, a Notary Public in and for the State and Parish aforesaid, do hereby certify that _____, who is personally well known to me as the Principal, who executed the foregoing Durable Power of Attorney for Health-Care in said State and Parish, and acknowledged that said Durable Power of Attorney for Health-Care to be the Principal's free act and voluntary deed.

WITNESS my signature this _____ day of _____, 20____.

Notary Public



SECTION II

Living Will

How do I execute a living will?

Louisiana law includes a sample living will declaration form. Your living will does not have to follow the language exactly, but it is a good starting point. The statutory form is included in this booklet. To be valid your living will should be executed as follows.

- ▶ You must sign and date the living will in the presence of at least two witnesses who are at least 18 years old.
- ▶ Neither of the witnesses can be someone who is:
 - related to you by blood or marriage; or
 - entitled to any portion of your estate under any will or by operation of law.

You may register the original or certified copy of your living will with the Secretary of State. A fee may be charged for this.

You can also make an oral declaration in the presence of two witnesses at any time after you have been diagnosed as having a terminal and irreversible condition.

You should always give a copy of your living will to your attending doctor, your family, and anyone else who may be called upon to care for you should you become ill.

When does the living will become effective?

The living will does not become effective until you have been examined by two doctors, one of whom is your attending doctor, and they certify in writing that you have been diagnosed as having a terminal and irreversible condition.

Can I revoke my living will?

Yes. You can change your mind and revoke your living will at any time, regardless of your mental condition. You can revoke your living will by:

- ▶ communicating to others orally that you revoke your living will;
- ▶ a physical act, such as tearing, defacing, or burning the document; or
- ▶ signing and dating a written document indicating your intent to revoke your living will.

A written revocation is the preferred method of revoking your living will. Make sure you provide a copy of the revocation to anyone who has a copy of your living will.

If your doctor has a copy of your living will or has made a notation in your medical record, the revocation does not become effective until it is communicated to your attending doctor. Ask your doctor to record in your medical record the date and time your revocation is received.

Although your doctor is not required to contact the Secretary of State to determine if a revocation has been filed, if you have filed your living will with the Secretary of State, you must send a notice of revocation to the Secretary of State. Until the Secretary of State receives notice of revocation, a physician may rely on the validity of the living will filed with the Secretary of State.

What is my doctor's obligation with regard to my living will?

It is your responsibility to let your doctors and other health-care providers know you have a living will. Your doctor is required to include your living will in your medical record, and follow its directions as closely as possible, even if your relatives disagree. If your doctor has been notified that you have made a living will, or your doctor independently determines you have a living will on file with the Secretary of State, your doctor must take certain steps. If you develop a terminal and irreversible condition, your doctor must certify it in writing before the wishes in your living will go into effect. However, your doctor has no duty to search the registry to learn whether you have a living will on file.

Your doctor may independently decide not to follow your directions because of some conflict. If your doctor chooses to not follow the directions in your living will, the law requires your doctor to make a reasonable effort to transfer you to another doctor. This problem can be avoided if you discuss your wishes with regard to life-sustaining treatment with your doctor in advance and determine that your doctor will honor your wishes. If not, you have the option of seeking another doctor who understands your desires and has no conflict about honoring them.

If the policies of any of your health-care providers (health maintenance organization, home health agency, hospice, hospital or nursing facility) prohibit the provider from following your living will directions, the provider must take all reasonable steps to transfer you to another provider who will honor your directions. Find out about any such policies now, to anticipate or avoid problems in the future.

How will people know I have a living will?

First, you should discuss it with your family, close friends, and all your health-care providers. These are the people most likely to need this information. However, you can also carry a wallet card like the one provided with this booklet. If you register your living will with the Secretary of State and pay \$20, you may request a "Do Not Resuscitate" bracelet from the Secretary of State. You should not order the bracelet unless you are suffering from an incurable injury, disease or illness. Although emergency personnel and other health-care providers are not bound by the instruction on this bracelet, it may alert them that you have a living will in the registry. However, if you wear the bracelet before you have been certified as terminal and irreversible, you may be telling health-care providers to withhold treatment in a way that is inconsistent with Louisiana law. Before making the decision to order or wear the bracelet, discuss your situation with your health-care provider, family, close friends and clergy.

Instructions

Louisiana Living Will Declaration

How to Use This Form

- ▶ Read this guide carefully.
- ▶ Read the instructions on this page.
- ▶ Neatly print or type all information except where a signature is required.

If you wish, you can just fill in the blanks on the attached form. Alternatively, you can customize the declaration with specific directions. For example, you may use the living will to designate another person to make decisions about withholding or withdrawing life sustaining measures if you have not done so in your HCPOA. Just like the living will itself, that portion will not have any effect until AFTER you are certified by two doctors as having a terminal and irreversible condition and are comatose, incompetent, or otherwise mentally or physically incapable of communications.

Sample language to add:

I hereby designate _____ (agent's name) _____ to make decisions about withholding or withdrawing life sustaining measures. It is my intent that, in the event there is a disagreement between the instructions in this Declaration and the instructions of my agent, health-care providers shall follow the instructions of my _____ (choose either "Louisiana Living Will Declaration" or "agent").

Alternate sample language to add if you have specifically granted the power to make such decisions in an HCPOA:

I have also executed a document entitled Louisiana Health-care Power of Attorney Form which appoints _____ (agent's name) _____ to make decisions concerning the withdrawal or withholding of life sustaining measures. It is my intent that, in the event there is a disagreement between my Louisiana Living Will Declaration and the instructions of my agent health-care providers shall follow the instructions of my _____ (choose either "my Louisiana Living Will Declaration" or "agent").

If there are some life sustaining measures that you want performed but others that you do not want performed, specify the ones you want or don't want withheld or withdrawn.

Sample language:

I specifically authorize only the following procedures to be withheld or withdrawn (initial those procedures you do not want.)

_____ *mechanical ventilators or respirators*

_____ *cardiopulmonary resuscitation (CPR)*
_____ *kidney dialysis*
_____ *antibiotic therapy to treat or prevent infections*
_____ *nutrition and hydration provided through feeding tubes*
_____ *major surgery*
_____ *other (add your own here)*_____

**IF YOU DO NOT UNDERSTAND OR HAVE QUESTIONS
ABOUT THE USE OF THIS FORM, CONTACT
AN ATTORNEY, HEALTH-CARE PROVIDER,
OR SOCIAL WORKER.**

Louisiana Living Will Declaration

Declaration made this _____ day of _____, 20 ____ .

I, _____, being of sound mind, willfully and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below and do hereby declare:

If at any time I should have an incurable injury, disease or illness, or be in a continual profound comatose state with no reasonable chance of recovery, certified to be a terminal and irreversible condition by two physicians who have personally examined me, one of whom shall be my attending physician, and the physicians have determined that my death will occur whether or not life-sustaining procedures are utilized, and where the application of life-sustaining procedures would serve only to prolong artificially the dying process, I direct that such procedures be withheld or withdrawn and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care.

In the absence of my ability to give directions regarding the use of such life-sustaining procedures, it is my intention that this declaration shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences from such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

Signed: _____

City, Parish and State of Residence _____

WITNESSES

I declare that the person who signed this document is personally known to me, and that he or she appears to be of sound mind. I am at least 18 years of age and am not related to the declarant by blood or marriage, or entitled to any portion of the declarant's estate under any will or by operation of law.

1. _____
Witness

Address

City state/zip



2.

Witness

Address

City

state/zip

SECTION III

Practical Tips

What practical steps can I take to be sure that my advance directive is followed?

Even with an advance directive, there is no guarantee that your wishes will be followed. Medical technology continues to change and the law can be uncertain about your rights under various circumstances. The treatment issues that may occur may differ from the situations you anticipated in your advance directive.

However, you can increase the chances that your wishes will be followed by taking the following steps.

- ▶ Talk with your doctor, both before and after you execute an advance directive. See Section IV for issues to discuss with your doctor.
- ▶ Discuss your values and philosophy, as well as specific treatment preferences with your agent. Also, discuss how to handle anyone who might object to the choices you have made.
- ▶ Make sure that the document is available when needed.
- ▶ Discuss the fact that you have executed the document with your family, friends or spiritual advisor — anyone who is likely to be involved if you become incapacitated.
- ▶ Carry a wallet card like the one provided at the end of this guide.
- ▶ If you enter a hospital or nursing home, you should be given a copy of its policy about advance directives. If you do not receive this information, ask for a written copy of its policies and procedures. Check the policy to make sure the facility will honor your advance directive.
- ▶ Review your advance directive every year or two in order to decide if anything in your life has changed that would require you to change your advance directive.

How can I be sure that the document will be available when I need it?

You should make copies of your advance directive. At the minimum you should have two copies for yourself, a copy for each of your doctors, and one for your agent, if you have chosen one.

You should keep *your copies* in a safe, accessible location where someone who knows you can find them in an emergency. It is a good idea to tell friends and family where the document is located. If you are frail and live alone, you may also wish to tell a neighbor where you have put your copies.

Give a copy to your family doctor and any specialists you see regularly. The copy for your *doctor* should be made a part of your medical record.

If you enter a hospital or nursing home, request that a copy be included in your medical record and your wishes noted on your chart.

Carry the wallet card you will find at the end of this guide. Plan for how a copy of your advance directive can be obtained if you are injured or become ill while you are away from home.

How do I start the conversation with my family and friends?

Often it is difficult to begin the conversation because others are reluctant to discuss serious illness or medical decisions and may try to put off the discussion. It may be helpful to start by saying something like, “This is important to me and I would really like you to listen.”

You may find it useful to discuss specific situations that have happened to someone you know as a way of illustrating your concerns and wishes.

When should I talk to my agent?

You should speak with your agent both before and after you complete the advance directive. Make sure your agent understands your specific wishes as well as your general philosophy and beliefs. You should also be sure that your agent will be able to and comfortable about carrying out your wishes.

After you have signed your advance directive, you may wish to talk about how your agent will be notified if you suddenly become incapacitated. Do your other friends, family or doctors know who your agent is?

SECTION IV

Talking to Your Doctor

When and why should I talk to my doctor?

The discussion with your doctor should take place both before *and* after you complete an advance directive. There are three general reasons to have this discussion:

- ▶ to offer information *to* your doctor about your preferences;
- ▶ to gather information *from* your doctor about the various medical issues that you will address in your advance directive; and
- ▶ to discuss whether or not your doctor feels comfortable acting upon your treatment preferences as you have outlined or will outline in the advance directive.

The last step is particularly critical. For various reasons, your doctor may not be willing to honor your wishes. If this is the case, you may wish to discuss a referral to another doctor who will be able to honor your wishes should you become incapacitated.

What if I do not have a doctor?

Over 50% of the population does not have a doctor they see regularly. If you do not have a chronic condition, the chances are that you may see a doctor only occasionally for minor problems.

You may wish to establish a relationship with a primary care doctor with whom you feel comfortable discussing such matters as your advance directives.

You may wish to complete the advance directive now based on your own experiences or preferences. Reading this section will help you identify the types of situations and treatments you wish to address in your advance directive.

If you do not have a doctor and you enter a hospital, it is essential that you discuss your advance directive with the doctor treating you.

What should I say to my doctor?

It is a good idea to set up a special appointment specifically to talk about advance directives. If you are unable to pay for a special appointment, ask your doctor if he or she will spend some additional time during an appointment for treatment. Review the information and forms in this guide before you go. You may want to take it with you. Before you go, think about the following questions:

- ▶ Are there conditions or situations you consider “worse than having died”?
- ▶ Did anyone you know linger too long or suffer needless treatment?

- ▶ Are there certain kinds of life-sustaining treatments you would *not* want if you had a terminal condition?
- ▶ Are there basic physical functions that you feel you must have to make “life worth living”? For example, how important is it that you be able to recognize or respond to those you love?

Discuss with your doctor what you would want to have happen and which procedures you do or do not wish to undergo. Show your doctor some of the sentences you have written for your advance directive and ask for an explanation of what they might mean in a situation that you might face.

What if I already suffer from a chronic condition?

If you are suffering from a condition that may result in significant incapacity (such as cancer, Alzheimer’s disease, diabetes or cardiovascular disease), it is wise to discuss possible complications with your doctor. Ask what types of treatment are typically used over the course of the condition. For example, amputation for gangrene may be a future issue if you are suffering from the complications of diabetes.

What is the difference between withholding and withdrawing medical treatment?

If a sudden illness or injury occurs or an on-going condition worsens, medical intervention might be required to sustain your life. Sometimes you might prefer that treatment be withheld (not started) because it is a painful burden and would only extend your life briefly.

Withdrawing treatment refers to situations in which life-sustaining interventions have already been started and you wish to *stop* the medical procedures that are sustaining life.

The decision *not to start* life-sustaining treatment may seem different from *stopping* treatment after a doctor has determined that you will not recover. However, legally and ethically, there is no difference. You have the right to have life-sustaining treatment either withheld or withdrawn. You may wish to talk to your doctor about a “trial of treatment” — that is, starting a treatment and stopping it later.

What are some of the medical issues I should know about?

Quality of life — Evaluations of quality of life are subjective and personal. What is an acceptable quality of life to someone else may be a fate “worse than death” to you. This guide contains general information on the three most common conditions people address in their advance directives. You and your doctor should discuss which, if any, of these conditions you wish to cover in *your* advance directive.

Medical interventions that sustain life — Should you become incapacitated by any of the conditions noted below, it may be necessary to use certain medical treatments to keep you alive. An advance directive allows you to refuse certain types of life-sustaining treatment. This guide describes some of the common types of life-sustaining treatments you may wish to include in your advance directive. Your doctor can offer more detailed information and discuss the options with you.

Comfort care — No matter what life-sustaining treatment you choose to limit, you can still receive medical care to relieve pain and ensure your physical and emotional comfort. This is a

very important issue to discuss with your doctor. There is some overlap between medical interventions to sustain life and those designed to offer comfort care. For example, treatment of infections with antibiotics may relieve discomfort *and* prolong life.

What general types of medical conditions affect my quality of life and might be covered in an advance directive?

There are four general types of conditions that many people discuss with their doctors when considering an advance directive.

- 1) *Persistent vegetative state* - Patients in this condition may live for a long period of time as long as they are fed and given water artificially. Some time may be necessary for the doctor to actually make this diagnosis. Discussions with your doctor concerning your existence in this condition can be very meaningful on the issue of the quality of life you wish to experience.
- 2) *Irreversible coma* - One issue to discuss with your doctor is when a coma will be considered “irreversible.” Your doctor will exercise discretion and professional expertise to determine when a coma is irreversible. This may not always be a clear cut decision and some people note in their advance directives a time period after which they wish to have certain treatments withheld if they do not recover consciousness.
- 3) *Conscious but unable to communicate* - The patient may be seriously mentally impaired such as a patient with advanced Alzheimer’s disease. A patient may be seriously physically ill like the patient suffering the physical deterioration which may follow a major stroke. There may be a drug-induced inability to communicate such as that experienced by some cancer patients receiving extremely strong pain medication.
- 4) *Near death* - The patient may be dying soon even with aggressive treatment.

If I suffer from one of these conditions, what types of medical interventions might I wish to consider limiting?

The most common types are:

- ▶ *Respirator use (also called a ventilator)* — For patients suffering severe problems with breathing, or the complete failure of the lungs, the respirator can take over the role of the chest muscles to allow the patient to breathe. A respirator can get more oxygen into the lungs than normal breathing can. A tube is placed down the throat into the wind pipe. With the tube in place, it is not possible to talk or eat. Even for the patient with irreversible diseases or paralysis affecting breathing, mechanical ventilation offers the possibility for prolonged life. The need for a respirator may be permanent or temporary.
- ▶ *Cardiopulmonary Resuscitation (CPR)* — A number of medical devices and procedures can be used to restore and maintain blood circulation and breathing in a person whose heart and/or breathing has stopped. These can include pumping on the chest, artificial breathing, and sometimes medications and/or electric shock. When a person’s heart stops beating or beats so poorly that blood circulation is not enough to supply the brain with oxygen and nutrients, the brain is irreversibly damaged within minutes. Spontaneous breathing cannot be recovered and death follows quickly. CPR offers a way to reverse the immediate threat to life. There is medical evi-

dence that CPR for certain chronically ill people (especially if the person is also elderly) is almost never successful. Successful attempts at CPR may still result in brain damage or other injuries. After CPR, the patient may need a respirator for a few days or even permanently.

Note: CPR can be administered by nondoctors and is required to be used by ambulance medics or other health-care workers who respond to emergencies.

- ▶ *Kidney dialysis* - This is a procedure to remove impurities from blood in patients whose kidneys have failed. Healthy kidneys regulate the body's water and salts and remove the excess (as urine). They also produce and release hormones into the blood stream that control vital functions such as blood pressure and red blood cell production. Dialysis offers an effective artificial way to perform some kidney functions. Kidney dialysis is also important for removing excess fluid. The blood is pumped out of the patient's body into a dialyzer where the impurities are removed, then returned to the patient's body. Some people remain on dialysis for a number of years.
- ▶ *Certain medications* — Medications such as those used in chemotherapy or antibiotics may be necessary to sustain life. Antibiotics are used to treat a variety of infections. For elderly patients, the most common types of life-threatening infections include pneumonia, urinary tract infections and infected decubitus ulcers (bed or pressure sores). These treatments are usually effective in treating infections, but they cannot cure underlying diseases and disabling conditions that are common among elderly patients. Untreated infections such as some types of pneumonia can bring a fairly comfortable death within a short time. Your preference regarding antibiotics may depend upon whether the antibiotics can *cure* an acute, mild infection and return you to a stable condition or whether they only slow down an inevitable deterioration of your condition.

Note: Treatment facilities may sometimes require the use of antibiotics in order to protect other patients.

- ▶ *Artificial nutrition and hydration* — Food and water can be administered by tube to patients unable to take it orally. People who are physically unable to swallow food and fluids by mouth are at obvious risk of malnutrition, dehydration, and death. Tube feeding can be provided through a tube that is put down the nose to the stomach. A tube may also be surgically inserted through the belly wall to the stomach or small intestines. Or IVs (intravenous tubes) may be inserted through the skin to a blood vessel.

Note: Some people fear that withdrawing nutrition and hydration will cause the patient to suffer. The prevailing medical opinion is that unless a patient could take food and water by mouth, there is an anesthetizing effect caused by dehydration and inadequate nutrition. For a person in a persistent vegetative state, there will not be any discomfort. For a terminally ill person, because there is often a reduction in intake of food and water as death approaches, any discomfort is unlikely and may be relieved by rubbing the lips with glycerin or placing crushed ice on the lips to relieve dryness.

What should I think about when I list a specific medical treatment in my advance directive?

If you indicate that you do not wish to have a certain type of intervention, this will limit your doctor's treatment options. Under some circumstances listing a specific intervention may interfere with a

doctor's ability to respond to the overall intent of your advance directive. For example, you may refuse one type of intervention that is necessary for another type of intervention to be effective.

Some advocates worry that a directive that specifically limits some types of intervention may leave the door open for other interventions (some of which may be new) that will have the same impact in terms of prolonging the dying process.

A doctor can provide guidance in how to effectively write this section of your advance directive. It is a good idea to review your advance directive periodically if you specify certain medical interventions you do not want. Or you may wish to limit a specific medical intervention and "any similar treatments."

Glossary

advance directive:	a generic term for legal documents (such as a living will or health-care power of attorney) that state your preferences for medical treatment in the event you become unable to make your own decisions.
agent:	the person you choose to make health care decisions on your behalf. An agent is the person designated in a health-care power of attorney to act for the principal. Also called a mandatary, or attorney-in-fact.
cardiopulmonary resuscitation (CPR):	those measures used to restore or support cardiac or respiratory function in the event of a cardiac or respiratory arrest.
declaration:	a witnessed document, statement, or expression voluntarily made by the declarant, authorizing the withholding or withdrawal of life-sustaining procedures. A declaration may be made in writing, orally, or by other means of nonverbal communication.
do-not-resuscitate bracelet:	an identification bracelet issued to “qualified” patients listed in The Secretary of State living will registry. The bracelet must include the patient’s name, date of birth, and the phrase “DO NOT RESUSCITATE.”
execute:	following the guidelines set down in the law for completing a document that is legally enforceable. This may include procedures such as having witnesses to your signature.
HCPOA:	an advance directive that remains valid after the principal becomes incapacitated, and empowers a designated person (the agent) to make health care decisions for an incapacitated principal; sometimes called a health-care proxy or a mandate.
incapacitated person:	a person who lacks sufficient understanding or capacity to make or communicate a responsible decision on health care for himself or herself, because of a physical disability, chronic alcoholism, drug addiction, disease, or mental disability.
life-sustaining procedures:	any medical procedure or intervention, which, within reasonable medical judgment, would serve only to prolong the dying process for a person diagnosed as having a terminal and irreversible condition, including such procedures as the invasive administration of nutrition and hydration and the administration of cardiopulmonary resuscitation. A “life-sustaining procedure” shall not include any measure deemed necessary to provide comfort care.
principal:	a person who grants an agent authority to act on his/her behalf. The principal must sign the POA while capable of making his or her own health-care decisions.
qualified patient:	a patient diagnosed and certified in writing as having a terminal and irreversible condition by two physicians who have personally examined the patient, one of whom is the attending physician.

respirator:

also called a ventilator. Refers to a mechanical device that uses a tube through the nose or throat to assist breathing. “Ventilator” is the term preferred by health-care professionals.

terminal and irreversible condition:

a continual profound comatose state with no reasonable chance of recovery or a condition caused by injury, disease or illness, which, within reasonable medical judgment, would produce death and for which the application of life-sustaining procedures would serve only to postpone the moment of death.

Resources

Although your doctor should be your primary source of information about these advance directives, a number of other resources may be of assistance to you.

Community Resources

1. **Governor's Office of Elderly Affairs**
P.O. Box 80374
Baton Rouge, LA 70898-0374
(225) 342-7100
Can make referral to program in caller's parish that can provide information and assistance on this subject.
2. **Secretary of State**
Living Will Registry
(225) 342-2083
3. *Many hospitals and nursing homes have ethics committees who deal with the issues involved in advance directives.*

National Resources

1. **Partnership for Caring, Inc./ Choice in Dying**
1035 30th Street, N.W.
Washington, DC 20007-3823
1 (800) 989-9455
An educational organization which provides information to the general public and health-care professionals about decisions at the end of life.
2. **The Medical Directive**
1031 West Montana Street
Chicago, IL 60614-2210
This pamphlet illustrates typical situations when advance directives may be necessary. It is intended to help you think through what you want to put in your advance directive. For two copies, send \$5.00 and a self-addressed, stamped envelope.
3. **In Your Hands: The Tools for Preserving Personal Autonomy** (video)
Commission on Legal Problems of the Elderly
Attention: Zabrina
American Bar Association
740 15th Street, N.W., Floor 8
Washington, DC 20005-1022
(202) 662-8689
Fax: (202) 662-8696
This video, featuring Helen Hayes, explains the need for making advance directives. Copies may be purchased from the American Bar Association for \$86 (including shipping) and that price includes a Program Guide along with 52 viewer booklets, "Health and Financial Decisions: Legal Tools for Preserving Your personal Autonomy." Can be rented from ABA for \$45 (including shipping).

4. **Values History**
Attention: Pamela Muir
Institute of Public Law
1117 Stanford, N.E.
Albuquerque, NM 87106-3700
(505) 277-5006

This nonlegal document suggests topics to be considered before formulating an advance directive, such as preferences about independence and control; attitudes towards health, illness, dying and death; religious beliefs, etc. Single copy in either English or Spanish is \$3.00. Make check payable to "Institute of Public Law." Not copyrighted and may be reproduced. Very useful with church study groups.

Wallet Card

It is essential that your health care provider know that you have executed an advance directive. Your treating physicians should be given a copy of the documents.

The wallet card is one way to do this. Fill out the card, sign, and date it. Then cut it out and carry it with you at all times.

Notice to Health Care Providers

☐ I have executed a **Living Will**

☐ I have executed a **Health Care Power of Attorney** and appointed:

_____ (Agent's Name)

_____ (Agent's Address)

Phone: (_____) _____ (day) (_____) _____ (eve.)
as my agent to make health and personal care decisions for me if I am unable to do so. He/she has a copy of my complete health care power of attorney.

(Date)

(Your Printed Name)

(Signature)

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